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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,823

07/18/2007

Thomas Clos

CB60414-1

4639

20462

7590

06/29/2011

GlaxoSmithKline

GLOBAL PATENTS -US, UW2220

P. O. BOX 1539

KING OF PRUSSIA, PA 19406-0939

EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

3727

NOTIFICATION DATE

DELIVERY MODE

06/29/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/591,823	<b>Applicant(s)</b> CLOS ET AL.	
	<b>Examiner</b> MARK SPISICH	<b>Art Unit</b> 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-9,11-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,6-9,11-14 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 May 2011 has been entered.

### ***Election/Restrictions***

2. Applicant elected the species of Figures 1-8 without traverse in the reply filed on 2 August 2010. **Claim 1 (and all the claims dependent thereon) are no longer drawn to the elected species** and are drawn to the species of Figures 12-15. **As such, claims 1-3,6-9,11-14 and 17-20 are all withdrawn from consideration as being drawn to a non-elected species.**

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blakeman (USP 2,706,825) in view of Moskovich et al (US PUB 2004/0025275). The patent to Blakeman discloses toothbrush head (11) attached to a handle (10) and

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supporting a bristle carrier (20) of rubber, plastic, or essentially any elastic or flexible material (column 1, lines 64-70). The bristle carrier (20) is supported at opposite ends thereof (21) leaving the regions of the carrier between the ends unsupported. The handle and head are preferably made of plastic (column 2, line 23). Further, the ends of the bristles (23) are embedded in the flexible/rubber material of the carrier. Also, embedding the bristle ends in the (flexible) carrier material are conventional at present (in process molding). The issue comes down to the "gel" material. The patent to Moskovich is cited to at least teach that gel materials are known in the art of toothbrushes (see paragraph 0026 of '275). It would have been obvious to use any known material known in the art for the carrier (20) of Blakeman as long as the material exhibited properties required for the carrier to function as desired. Also, the patent to Blakeman suggests that any known elastic or flexible material can be used. The so-called "bonding" would generally be a product of the (known) bristle mounting method (page 10, lines 5-7 of the present application). The use of any known gel material, including the polyurethane gel material, would be an obvious choice of design. The term "visco-elastic" added to claim 16 is basically a description of a gel.

### ***Response to Arguments***

5. Applicant's arguments filed 23 May 2011 have been fully considered but they are not persuasive. Applicant's arguments made with regard to claim 1 will not be addressed in that this claim is no longer drawn to the elected species. With regard to claim 16, applicant's comments are primarily directed to the secondary reference to Moskovich et al (US PUB 2004/0025275). The patent to Blakeman already discloses

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bristles (23) embedded within a rubber or otherwise flexible carrier (20). In any event, simply embedding the ends of the bristles (23) in the rubber carrier (20) could very easily be made by molding the ends therein into the rubber material (such is a well known method). The examiner's position with regard to claim 16 is merely whether the material of the carrier (20) of Blakeman could be chosen to be a (polyurethane) gel material. It already has the bristles embedded within it. Moskovich was cited to show that one of ordinary skill in the art of toothbrushes is aware of such gel materials and would recognize that they would be a suitable substitute for the carrier material (20) of Blakeman. Blakeman suggests that any known elastic or flexible material could be used for the carrier (20). Applicant's comments are directed to part of the Moskovich device that are not relied on by the examiner. It is relied on solely for its teaching of a flexible gel material and wherein such material is also shown to be known to one of ordinary skill in the toothbrush art. The combination of Moskovich with Blakeman simply involves making the carrier (20) of Blakeman of a gel, while keeping the other elements of Blakeman the same (including the manner of embedding the ends of the bristles).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK SPISICH whose telephone number is (571)272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Spisich/  
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